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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of

Application by SBC Communications Inc.,)
Southwestern Bell Telephone Company, and)
Southwestern Bell Communications Services,)
Inc. d/b/a Southwestern Bell Long Distance)
for Provision of In-Region, InterLATA)
Services in Texas)

CC Docket No. 00-04

COMMENTS OF THE
ASSOCIATION FOR LOCAL
TELECOMMUNICATIONS SERVICES

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SUMMARY

ALTS is the leading national trade association representing facilities-based competitive local exchange carriers (“CLECs”). ALTS does not represent any of the major interexchange carriers (“IXCs”), and therefore its interest in this proceeding is singularly focused on ensuring that the Texas local telephone market is open to competition. In these Comments, ALTS reviews the aspects of SBC Communications, Inc.’s (“SWBT”) application that fall short of compliance with the 271 checklist and sets forth its analysis in accordance with the language of section 271(d)(3) and the past precedent of the Department of Justice and the Commission in analyzing the six previous RBOC applications for section 271 authority.

While ALTS commends SWBT for making significant progress in opening the Texas local exchange market to facilities-based competitors and complying with the requirements of the competitive checklist, ALTS submits that SWBT’s performance of its obligations under several checklist items necessitates a determination by the Commission that SWBT is not in compliance with its obligations. Specifically, SWBT’s Application does not meet the following checklist items:

- Item (i) – Nondiscriminatory access to interconnection trunks and collocation;
- Item (ii) – Nondiscriminatory access to unbundled network elements;
- Item (iv) – Nondiscriminatory access to unbundled local loops, including DSL capable loops; and
- Item (viii) – Nondiscriminatory access to White Pages directory listings.

As these comments will show, ALTS demonstrates that SWBT fails to provide nondiscriminatory interconnection to its network as is required by the competitive checklist. Specifically, SWBT has unreasonably and consistently delayed provision of interconnection trunks to CLECs, consequently causing CLEC customers to experience blocking and to have their requested service from CLECs delayed. SWBT's refusal to provide trunking to meet CLEC needs has harmed competition by requiring CLECs to limit their marketing efforts and their acceptance of new customers. In addition, the provision in SWBT's current Texas Collocation Tariff allowing SWBT to charge CLECs ordering cageless collocation for the cost of constructing a "partition" around SWBT's own equipment is inconsistent with the national rules established by the Commission in its recent *Collocation Order*.¹ As a result of this violation, CLECs are hampered in their ability to gain timely, effective and nondiscriminatory access to SWBT central offices for the physical placement of equipment necessary to allow them to compete in the Texas local market. SWBT must address the unreasonable restrictions on access to, and use of, collocation space before the Commission can find that SWBT complies with its 271 interconnection obligations.

SWBT is not providing nondiscriminatory access to unbundled network elements, including OSS, as required by checklist item (ii). SWBT regularly fails to meet Firm Order Commitment dates, causing competitive harm to CLECs. SWBT has been unable to provide fully functional, automated OSS to CLECs that are in parity with the functionality SWBT is able to provide to its retail services. Many of SWBT's most critical preordering, ordering and provisioning systems rely on manual processing. SWBT's reliance on manual processes for its

¹ See, *In re Deployment of Wireline Services Offering Advanced Telecommunications Capability*, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 98-147,

OSS often results in significant delays or disruptions due to missed due dates and manual processing errors. Typical CLEC orders that should be processed in an automated, electronic fashion fall out for manual processing and, instead, must be hand-typed and handled by different SWBT personnel, leading to service delays and other customer-affecting problems. In addition, SWBT's systems are entirely incapable of relating orders on an electronic basis and orders that should be related in an automated fashion either fall out for manual processing or one or more of the orders flow through while the remainder are rejected.

SWBT fails to provide nondiscriminatory access to unbundled local loops, and, in particular, DSL-capable loops, pursuant to checklist item (iv). When provisioning unbundled local loops, SWBT fails to follow proper loop provisioning procedures and, as a result, SWBT's performance is deficient to the detriment of CLEC customers.

SWBT's provisioning of DSL-capable loops does not comply with the requirement that it provide nondiscriminatory access to local loops. Unlike New York, in which CLECs reported numerous problems with loop conditioning and other requirements, Texas offers a very real potential for the elimination of competitive handicaps. The technology restrictions, inadequate and unequal ordering and provisioning, inadequate and unequal access to loop make-up information, costly loop conditioning charges and imposition of other unsupported rates and charges were addressed in the arbitration case between SWBT and Covad Communications/RhythmsLinks. Unfortunately, there is every expectation that the PUC's arbitration order will be challenged by SWBT, thus creating pricing uncertainty for CLECs and slowing the progress that otherwise could be made to resolve systemic problems with SWBT's loop provisioning. Moreover, performance measures for DSL provisioning have only just been

FCC 98-48 (rel. Mar. 31, 1999) ("*Collocation Order*").

developed and the required minimum of three months of demonstrated parity performance is therefore not available. Under these circumstances it is premature to declare that SWBT has satisfied the checklist with respect to DSL loops.

Failure to Meet the Public Interest Requirements

SWBT fails the public interest analysis of the 271 review process. The SWBT Performance Remedy Plan falls short of providing true assurances that SWBT will *maintain* a competitive local market, once that point is truly reached. The “self-executing remedies” set out in the Plan are far too inconsequential to SWBT to serve as effective penalties for anti-competitive behavior, especially in view of the Texas Commission’s limited authority over SWBT’s and its CLEC affiliate’s behavior in the marketplace. Without stringent “anti-backsliding” measures complete with a “rocket docket” type enforcement mechanism to ensure timely resolution of claims regarding anti-competitive behavior, the public interest cannot properly be protected. This mechanism does not exist.

Tiered Penalties and Fresh Look Opportunities

ALTS recommends that the Commission employ anti-backsliding measures, in a manner similar to those proposed by Allegiance Telecom in its Petition for Expedited Rulemaking. Although the Commission recently dismissed Allegiance’s Petition, ALTS re-urges the adoption of a three-tiered penalty approach: **Tier 1:** the first failure by SWBT to comply with a performance measure will result in mandated rate reductions; **Tier 2:** failure of Tier 1 rate reductions to curb anti-competitive behavior will result in suspension of 271 authority; and **Tier 3:** failure of Tiers 1 and 2 will result in the imposition of material fines on SWBT.

Further, ALTS recommends that the Commission make available “fresh look” opportunities coincident with any grant of 271 authority. The Commission has implemented

such policies in the past to allow customers and competitors an opportunity to take advantage of significantly changed circumstances in a telecommunications market. Here, a fresh look policy will prevent certain long-term contracts with excessive termination penalties from foreclosing the development of competition in the Texas local exchange market.

Despite the efforts of all parties and the Texas Commission, there remain checklist items that SWBT fails to meet. Because full compliance is required before interLATA entry can be permitted, SWBT's Application should be denied. As soon as SWBT has remedied the deficiencies identified here, SWBT should refile its Application and once the Commission implements the necessary pro-competitive anti-backsliding measures ALTS and others advocate herein, the federal Telecommunications Act's goal of widespread facilities-based competition will be close to realization.

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In the Matter of

Application by SBC Communications Inc.,)	
Southwestern Bell Telephone Company, and)	
Southwestern Bell Communications Services,)	CC Docket No. 00-4
Inc. d/b/a Southwestern Bell Long Distance)	
for Provision of In-Region, InterLATA)	
Services in Texas)	

**COMMENTS OF THE
ASSOCIATION FOR LOCAL
TELECOMMUNICATIONS SERVICES**

The Association for Local Telecommunications Service ("ALTS"), by its attorneys, and pursuant to the Commission's January 10, 2000, Public Notice in the above-captioned proceeding, hereby submits these comments on the Application by SBC Communications, Inc. ("SWBT") for Authorization under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of Texas (the "Application").¹

ALTS is the leading national trade association representing facilities-based competitive local exchange carriers ("CLECs"). ALTS does not represent any of the major interexchange carriers ("IXCs") and, therefore, its sole interest in this proceeding is to ensure that Texas' local market is open to competitors. As an initial matter, ALTS wishes to commend and thank the

¹ *Application by SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Authorization To Provide In-Region, InterLATA Services in Texas*, CC Docket No. 00-4, Public Notice DA 00-37 (rel. Jan. 10, 2000).

Commissioners and Staff of the Public Utility Commission of Texas ("Texas Commission" or "PUC") for their tireless efforts in examining SWBT's compliance with section 271 of the Telecommunications Act of 1996 (the "Act" or "FTA"). In many respects, SWBT's Application comes closer to satisfying the requirements of section 271 of the Act than any such application filed to date. The progress made by SWBT in attempting to open the Texas local exchange market to competition since it filed its "draft" 271 application with the Texas Commission in March 1998 is indeed significant. Nonetheless, SWBT still has not demonstrated that it has fully implemented certain requirements, integral to opening the Texas market to competitors, and prerequisites to a grant of 271 relief by the Federal Communications Commission ("FCC" or "Commission").

I. THE TEXAS COMMISSION'S EXAMINATION OF SWBT'S SECTION 271 COMPLIANCE

The Texas Commission's examination of SWBT's compliance with section 271 has produced a record that provides the Commission with a reasonably accurate picture of the status of local competition in the State of Texas, and should be referenced by this Commission as it conducts its own examination of SWBT's Application. Nonetheless, the Commission must conduct an independent analysis of SWBT's compliance.

Under section 271(d)(2)(B), the Commission "shall consult with the State commission of any State that is the subject of the application in order to verify the compliance of the Bell operating company with the requirements of subsection (c)."² In requiring the Commission to consult with the states, Congress afforded the states an opportunity to present their views regarding the opening of the Bell Operating Company's ("BOC's") local networks to

² 47 U.S.C. § 271(d)(2)(B).

competition. The Commission has stated that “it is the Commission’s role to determine whether the factual record supports the conclusion that particular requirements of section 271 have been met.”³ In evaluating the weight to accord the record of the state proceeding, the Commission “will consider carefully state determinations of fact that are supported by a detailed and extensive record.”⁴

A. Overview of the Texas Commission’s 19-Month Examination of SWBT’s 271 Compliance

On March 2, 1998, SWBT filed its application for entry into the Texas interLATA telecommunications market pursuant to section 271; this application was examined in Project No. 16251. The PUC conducted a hearing on the merits regarding SWBT’s application in April 1998. On June 1, 1998, the PUC issued an order adopting the PUC Staff’s recommendations, which included 129 Staff recommendations to address deficiencies in the SWBT Application.⁵ As directed in the PUC’s Order, collaborative process work sessions were held from July through October to address the outstanding issues and deficiencies.⁶ The time allowed to address each subject area was strictly limited by the PUC and in many instances the collaborative sessions lasted 10-12 hours. These limitations often meant that CLECs could only address the most obvious problems and issues in the time allotted. Also frustrating to the CLECs was the fact that

³ *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In Michigan*, Memorandum Opinion and Order, 12 FCC Rcd 20543, ¶ 30 (1997) (“*Ameritech Michigan Order*”).

⁴ *Id.*

⁵ PUC Project No. 16251, *Order No. 25, Adopting Staff Recommendations, Directing Staff to Establish Collaborative Process (June 1, 1998)*.

⁶ In addition to the issues identified in the PUC’s Order, issues related to physical and virtual collocation were also included in the collaborative process. Issues related to Operation Support Systems (“OSS”) testing and Performance Measures were separated out and addressed in PUC Project No. 20000.

the work sessions were not recorded by a court reporter; only an oral summary at the conclusion of each session was transcribed.

The PUC Staff issued a series of status reports, from September through October, detailing the results of the collaborative process on specific issues.⁷ The Final Staff Status Report identified a number of issues left unresolved from the collaborative process, including collocation, provision of unbundled network elements, enhanced extended link (“EEL”), reciprocal compensation, DSL, and MFN.⁸

Beginning in late January 1999, Chairman Wood and the PUC Staff engaged in a series of private negotiations to address the unresolved issues.⁹ At the conclusion of these negotiations in April 1999, SWBT submitted a Memorandum of Understanding (the “MOU”) to the PUC containing commitments by SWBT that purported to address the outstanding issues in a manner consistent with Commission recommendations, and also including a commitment by SWBT to dismiss outstanding court appeals with prejudice.¹⁰ SWBT filed the MOU on April 26, 1999, without meaningful input or comment from the CLECs. Two weeks later, on May 13, 1999, SWBT filed a revised Proposed Interconnection Agreement (the “PIA”) that, according to claims by SWBT, complied with the terms of the MOU and incorporated commitments made by SWBT during the 1998 collaborative process. SWBT also filed a statement of its MFN policy in

⁷ Staff Status Reports were filed in Project No. 16251 on September 14 and September 28, 1998, and on October 27 and November 18, 1999.

⁸ *See, November 18, 1998 Final Staff Report on Collaborative Process.*

⁹ While these private negotiations resulted in the “resolution” of all outstanding issues except reciprocal compensation, it precluded the creation of a complete public record and resulted in some compromises the CLECs found highly objectionable, *e.g.*, CLECs paying for the partition around SWBT’s equipment for cageless collocation, no EEL for 4-wire digital loops carrying data traffic, a more restrictive MFN policy than required by the Supreme Court, and the premature closing of numerous operational issues.

¹⁰ *See, Memorandum of Understanding* filed in Project No. 16251 on April 26, 1999.

conjunction with the PIA.¹¹ According to the process established by the Texas Commission, the CLECs who were parties to the proceeding were allowed to comment on the revised PIA only to the extent the PIA was not consistent with the MOU.¹²

Additional collaborative work sessions conducted in June resolved some, but not all, of the identified issues related to the PIA and the MFN Policy. By Order dated August 16, 1999, the Texas Commission made determinations on the identified issues and ordered SWBT to revise the PIA and file the revised proposed agreement as "Texas 271 Agreement" (the "T2A").¹³ That Order also adopted an MFN policy specific to the T2A and required SWBT to include the policy within the terms of the T2A.¹⁴ On August 30, 1999, SWBT filed a T2A that did not conform with the Commission's August 16 Order, and, instead, proposed a series of modifications not approved by the Commission, including a separate attachment addressing provisioning of DSL. The Texas Commission addressed SWBT's changes in its Order dated September 22, 1999, rejecting SWBT's proposed DSL attachment, substituting the Staff's DSL recommendation, and ordering SWBT to file conforming revisions to the T2A.¹⁵ Subsequently, SWBT has filed a series of amendments to the T2A, the latest of which was filed on January 7, 2000.

The OSS and Performance Measurement issues that were separated into PUC Project No. 20000 were the subject of a review conducted by a third-party independent consultant.

¹¹ See, *SWBT's MFN Policy As Applied to the Proposed Interconnection Agreement* filed in Project No. 16251 on May 13, 1999.

¹² See, Project No. 16251, *Order No. 45, Filing of Comments on PIA, MFN Policy and Collocation Tariffs* (May 26, 1999).

¹³ See, Project No. 16251, *Order No. 50, Approving Proposed Interconnection Agreement as Amended* (August 16, 1999).

¹⁴ *Id.* at p. 3.

¹⁵ See, Project No. 16251, *Order No. 53, Approving Addition of DSL Attachment and Changes to the Texas 271 Agreement* (September 22, 1999).

Telcordia. On October 20–21, 1999, the Commission held a public hearing to review Telcordia’s final report (the “Telcordia Report”). The Telcordia Report identified deficiencies in SWBT performance in key areas, including: capacity and scalability, related purchase order numbers (RPONs), manual processing, DSL ordering and provisioning, and performance measures related to each of these items.¹⁶

After the PUC failed to approve the SWBT Application at the Texas Commission’s meeting on November 4, 1999, SWBT filed a series of affidavits containing additional promises and assurances regarding future changes to address concerns arising out of the Telcordia Report and the T2A.¹⁷ On December 16, 1999, the PUC approved SWBT’s application for interLATA service in Texas and SWBT thereafter filed its Application.

B. The Third-Party Testing Conducted in Texas Was Inferior to the Bell Atlantic KPMG Test

The Commission has consistently found that nondiscriminatory access to OSS is a prerequisite to the development of meaningful competition.¹⁸ The Commission therefore must examine a BOC’s OSS performance in order to evaluate its compliance with section 271(c)(2)(B)(ii) and (xiv).¹⁹ As the Commission has stated, “the most probative evidence that OSS functions are operationally ready is actual commercial usage.”²⁰ Absent commercial

¹⁶ The specific scope and results of the Telcordia Report are discussed in more detail in section I.C., *infra*.

¹⁷ Between December 13, 1999 and December 15, 1999, SWBT filed twelve affidavits and four corrections to those affidavits.

¹⁸ *Application of Bell Atlantic Corporation, et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in New York*, CC Docket No. 99-295 Memorandum Opinion and Order, ¶ 83 (December 21, 1999) (“*Bell Atlantic New York Order*”); *Ameritech Michigan Order*, ¶ 134.

¹⁹ *Bell Atlantic New York Order*, ¶ 84.

²⁰ *Bell Atlantic New York Order*, ¶ 89; *Ameritech Michigan Order*, ¶ 138; see, *Application of Bell South Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for*

usage, the Commission has recognized that carrier-to-carrier testing, independent third-party testing, and internal testing also can provide probative evidence of the operational readiness of an applicant's OSS.²¹ Third-party testing has become the method of choice for state commissions evaluating RBOC compliance with OSS requirements, primarily as a result of the highly successful third-party testing undertaken by the New York Commission. Unfortunately, the Texas Commission did not employ a third-party test that was as broad and thorough as that conducted for Bell Atlantic in New York.

A chief criticism of the Telcordia Report is that in many cases Telcordia closed issues even though it did not, and was not able to, confirm whether the issue could recur. Indeed, Telcordia closed issues that arose during testing if they simply did not recur during retest, and did this even though the full range of the activity being tested did not end before the retest period had concluded.²² Under these circumstances, closing issues simply because they did not recur during the retest period is not enough to support the demands of section 271.

A further problem with the Telcordia Report is that Telcordia's analysis ended when even a part of SWBT's OSS process resulted in manual intervention. Given that the purpose of the test was to determine if SWBT's OSS systems could accommodate commercial volumes, not testing items requiring manual intervention is a serious flaw. Moreover, the scalability and capacity tests did not consider manual processes. Thus, while it is clear that in order to properly

Provision of In-Region InterLATA Services in Louisiana, Memorandum Opinion and Order, 13 FCC Red 20599, ¶ 86 (1998) ("*Second BellSouth Louisiana Order*").

²¹ *Id.*

²² That is, in some instances, the Service Order Completion was returned after the retest period ended, thereby preventing Telcordia from evaluating the whole range of the activity. In such situations, Telcordia neither recommended that the retest period be extended nor informed the PUC staff that another retest period was necessary, either of which would have enabled Telcordia to include the full range of activity in its evaluation.

evaluate the commercial readiness of SWBT's OSS, it was essential that Telcordia analyze and retest all of SWBT's OSS processes, Telcordia did not do so. This omission is a glaring error.

The value of the Telcordia Report is further impaired by the fact that Telcordia's test did not include a reliable evaluation of the types of service orders that facilities-based CLECs submit and did not include a test of LEX, the electronic interface almost all Texas facilities-based CLECs are using. Just as important, the parameters of the test were very narrow and did not evaluate back office systems.

While ALTS acknowledges the enormity of the task Telcordia undertook in approximately half the time allotted for the Bell Atlantic - KPMG test, these and other problems with Telcordia's work show that Telcordia did not accomplish the task set before it — evaluate SWBT's OSS (electronic and manual) to determine whether the systems were commercially ready. If the Commission concludes that the Telcordia test sufficiently tested the commercial readiness of SWBT's OSS, it will be significantly lowering the standards previously set by the Bell Atlantic – KPMG test. ALTS urges the Commission to hold firm in its requirement that a BOC's OSS test must truly assess commercial readiness and not “lower the bar” to the level set by the SWBT – Telcordia test. The Comments of the CLEC Coalition²³ address the problems associated with the Telcordia testing in further detail.

²³ The Comments of the CLEC Coalition include the affidavits of four ALTS members, Birch Telecom of Texas, Ltd., L.P., ICG Communications, Inc., NEXTLINK Texas, Inc. and Time Warner Telecom, L.P., which form the bases for the factual representations herein regarding interconnection trunks, collocation, access to UNEs, OSS and access to unbundled loops.

II. SWBT MUST DEMONSTRATE FULL COMPLIANCE WITH EACH REQUIREMENT UNDER SECTION 271

BOC entry into in-region, interLATA services is conditioned on compliance with section 271. BOCs first must apply to the Commission for authorization to provide interLATA services originating in any in-region state;²⁴ the Commission then must issue a written determination on each application no later than 90 days after it was received.²⁵ In acting on a BOC's application, the Commission must consult with the U.S. Attorney General and give substantial, but not outcome determinative, weight to the Attorney General's evaluation of the BOC's application.²⁶ In addition, the Commission must consult with the applicable state commission to verify that the BOC has in place one or more state-approved interconnection agreements with a facilities-based competitor²⁷ and that such arrangements comport with the section 271 competitive checklist.²⁸

The Commission may not authorize a BOC to provide in-region, interLATA service under section 271 unless it finds that the BOC has demonstrated that: (1) it satisfies the requirements for Track A or B entry;²⁹ (2) it has *fully* implemented and *is currently providing* all

²⁴ See, 47 U.S.C. § 271(d)(1).

²⁵ See, *id.* § 271(d)(3).

²⁶ See, *id.* § 271(d)(2)(A).

²⁷ See, *id.* § 271(d)(2)(B). BOCs may enter an application based on one of two "tracks" established under section 271(c)(1). Track A requires the BOC to prove the presence of an unaffiliated facilities-based competitor that provides telephone exchange service to business and residential subscribers. See, *id.* § 271(c)(1)(A). Track B requires the BOC to prove that no unaffiliated facilities-based competitor that provides telephone exchange service to business and residential subscribers has requested access and interconnection to the BOC network within certain specified time parameters. See, *id.* § 271(c)(1)(A). SWBT is applying under Track A. See, Application at 4-9.

²⁸ The Competitive Checklist is a 14-point list of critical, market-opening provisions. See *infra*, Section II.

²⁹ See, 47 U.S.C. § 271(d)(3)(A).

of the items set forth in the competitive checklist;³⁰ (3) the requested authorization will be carried out in accordance with section 272;³¹ and (4) the BOC's entry is consistent with the public interest, convenience and necessity.³² Pursuant to the legislation, the Commission "shall not approve" the application unless the Commission finds that the BOC meets these four criteria.³³

A. SWBT Must Satisfy the "Is Providing" Standard Under Section 271

The Commission has found that promises of *future* performance have no probative value in demonstrating *present* compliance.³⁴ To support its application, a BOC must submit actual evidence of present compliance, not prospective evidence that is contingent on future behavior.³⁵ In its evaluation of past section 271 applications, the Commission has mandated that a BOC demonstrate that it "is providing" each of the offerings enumerated in the 14-point competitive checklist codified in section 271(c)(2)(B).³⁶ The Commission has found that, in order to establish that a BOC "is providing" a checklist item, a BOC must demonstrate that it has a concrete and specific legal obligation to furnish the item upon request pursuant to a state-approved interconnection agreement or agreements that set forth prices and other terms and conditions for each checklist item, and that it is currently furnishing, or is ready to furnish, the

³⁰ *Id.* (emphasis added).

³¹ See, 47 U.S.C. § 271(d)(3)(B).

³² See, 47 U.S.C. § 271(d)(3)(C).

³³ *Bell Atlantic New York Order*, ¶ 18.

³⁴ *Bell Atlantic New York Order*, ¶ 37. States also have adopted this standard, see, *In re BellSouth Telecommunications, Inc.'s Entry into InterLATA Services Pursuant to Section 271 of the Telecommunications Act of 1996*, Docket No. 6863-U, (Ga. P.S.C. Oct. 15, 1998).

³⁵ *Id.*

³⁶ *Bell Atlantic New York Order*, ¶ 52 (citing *Ameritech Michigan Order*, ¶ 110). See, *Application of BellSouth Corporation, et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in South Carolina*, Memorandum Opinion and Order, 13 FCC Rcd 539, ¶ 78 (1997) ("*BellSouth South Carolina Order*").

checklist item in the quantities that competitors may reasonably demand and at an acceptable level of quality.³⁷

Moreover, the “is providing” standard requires that BOCs offer items described in the competitive checklist – in addition to any UNEs established by the Commission – at prices that are based on forward-looking, long-run incremental costs, or Total Element Long Run Incremental Cost (“TELRIC”) in order to obtain in-region interLATA relief.³⁸ As the Commission found in its *Ameritech Michigan Order*:

We conclude that Congress must have intended the Commission, in addressing section 271 applications, to construe the statute and apply a uniform approach to the phrase ‘based on cost’ when assessing BOC compliance with the competitive checklist.³⁹

Furthermore, the Supreme Court has upheld the Commission’s authority to require TELRIC pricing, holding that “the Commission has jurisdiction to design a pricing methodology.”⁴⁰ Thus, BOCs must provide competitive checklist items at TELRIC rates in order to obtain section 271 authority.

B. SWBT Must Satisfy the “Fully Implemented” Standard Under Section 271

To meet the required showing that it has “fully implemented” the competitive checklist under section 271, the BOC must demonstrate that it is offering interconnection and access to network elements on a nondiscriminatory basis.⁴¹ The Commission has determined that to comply with this standard, for those functions that are analogous to the functions a BOC provides

³⁷ See, *Bell Atlantic New York Order*, ¶ 52 (citing *Ameritech Michigan Order*, 12 FCC Rcd at 20601-02).

³⁸ *Bell Atlantic New York Order*, ¶ 237.

³⁹ *Ameritech Michigan Order*, ¶ 288.

⁴⁰ *AT&T Corp. v. Iowa Util. Bd.*, 119 S. Ct. 721 (1999).

to itself, the BOC must provide access to competing carriers in “substantially the same time and manner” as it provides to itself.⁴² The Commission has further specified that this standard requires a BOC to provide access that is equal to (*i.e.*, substantially the same as) the level of access that the BOC provides itself, its customer, or its affiliates, in terms of quality, accuracy, and timeliness.⁴³ Further, for those functions that have no retail analogue, the BOC must demonstrate that it provides access, which offers competitors a “meaningful opportunity to compete.”⁴⁴

C. SWBT’s Application Does Not Meet the “Fully Implemented” Standard Under Section 271

SWBT appears, in ALTS’ estimation, to have complied with its obligation to demonstrate that it “is providing” the majority of the items on the competitive checklist. ALTS submits, however, that SWBT has failed to demonstrate that it “is providing” several items contained on the competitive checklist under the “fully implemented” standard, and SWBT must be in compliance with this standard for all fourteen checklist items in order satisfy section 271. Failure to satisfy even a single checklist item precludes a finding of compliance with section 271.⁴⁵

SWBT’s Application is deficient in several fundamental areas: (1) SWBT does not provide nondiscriminatory access to interconnection trunks; (2) SWBT has not demonstrated that it provides interconnection that complies with the requirements of section 251 as a result of SWBT’s failure to make its collocation tariffs compliant with the Commission’s *Collocation*

⁴¹ *Bell Atlantic New York Order*, ¶ 44.

⁴² *Id.*

⁴³ *Id.* (citing *Ameritech Michigan Order*, 12 FCC Rcd at 20618-19).

⁴⁴ *Id.*

Order;⁴⁶ (3) SWBT does not provide nondiscriminatory access to unbundled network elements and Operational Support Systems; (4) SWBT does not provide nondiscriminatory access to unbundled loops, including DSL-capable loops and the provisioning of coordinated hot cuts and Operational Support Systems; and (5) SWBT does not provide nondiscriminatory access to White Page directory listings. Below, ALTS discusses the legal standards that the Commission has applied in its previous evaluations of RBOC applications for 271 relief, and provides a complete analysis of the deficiencies in SWBT's Application.

IV. DESPITE SUBSTANTIAL PROGRESS, SWBT HAS NOT FULLY IMPLEMENTED THE COMPETITIVE CHECKLIST

SWBT has made dramatic progress in eliminating barriers to competitive entry in the local exchange market in the State of Texas. As a result of the hard work of the Texas Commission and its Staff, along with the dedicated efforts of SWBT and ALTS members, substantial progress has been made in making a competitive market in Texas a reality. But despite the substantial progress achieved over the last two years, deficiencies remain in several areas that are of critical importance to promoting local competition.

The section 271 competitive checklist was designed to require BOCs to prove that their markets are irreversibly open to competition before they are authorized to provide long distance services. In enacting the competitive checklist, Congress recognized that unless a BOC has *fully* complied with the checklist, competition in the local market will not occur.⁴⁷ SWBT must provide the Commission with "actual evidence demonstrating its present compliance with the

⁴⁵ *Second BellSouth Louisiana Order*, ¶ 74.

⁴⁶ *See, In re Deployment of Wireline Services Offering Advanced Telecommunications Capability*, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 98-147, FCC 98-48 (rel. Mar. 31, 1999) ("Collocation Order").

⁴⁷ *Ameritech Michigan Order*, ¶ 18.

statutory conditions for entry, instead of prospective evidence that is contingent on future behavior.”⁴⁸ The Commission has steadfastly held that applications under section 271 should be granted only when the local market in a state has been fully and irreversibly opened to competition.⁴⁹ Furthermore, each and every checklist item is significant. As the Commission has consistently indicated, failure to comply with even a *single* checklist item constitutes independent grounds for denying an application for 271 authority.⁵⁰ The Commission also has stated that the BOC must demonstrate that it has “fully implemented the competitive checklist in subsection (c)(2)(B).”⁵¹ Strict compliance with each requirement of section 271 is the only way that the Commission can ensure that sustainable competition will be realized in a local market.

SWBT has not yet attained compliance with each item on the competitive checklist and, therefore, the Commission must deny SWBT’s application until such time as each of the criteria is satisfied. SWBT’s Application is deficient in a number of fundamental areas: (1) SWBT does not provide interconnection that complies with checklist item (i), including the duty to provide nondiscriminatory access to interconnection trunks and collocation; (2) SWBT does not provide nondiscriminatory access to all UNEs, including its OSS, as required by checklist item (ii); (3) SWBT does not provide nondiscriminatory access to unbundled local loops, including DSL-capable loops as required under checklist item (iv); and (4) SWBT has not demonstrated that it provides non-discriminatory access to White Pages directory listings as required by checklist item (viii).

⁴⁸ *Bell Atlantic New York Order*, ¶ 37 (citing *Ameritech Michigan Order* at 20573-7).

⁴⁹ *See infra*, Section IX, n.204.

⁵⁰ *See, e.g., Second BellSouth Louisiana Order*, ¶ 74.

⁵¹ *Bell Atlantic New York Order*, ¶ 44.

A. Checklist Item (i) - SWBT Does Not Provide Nondiscriminatory Access to Interconnection

Section 251 requires a BOC to allow requesting carriers to link their networks to the BOC's network for the mutual exchange of traffic. To fulfill the nondiscrimination obligation under this checklist item, a BOC must show that it provides interconnection at a level of quality that is indistinguishable from that which the BOC provides itself, a subsidiary, or any other party.

Section 271(c)(2)(B)(i) of the Act requires a section 271 applicant to provide or offer to provide "[i]nterconnection in accordance with the requirements of sections 251(c)(2) and 252(d)(1)." Section 251(c)(2) imposes upon incumbent LECs "the duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network . . . for the transmission and routing of telephone exchange service and exchange access." Pursuant to section 251(c)(2), interconnection must be: (1) provided at any technically feasible point within the carrier's network; (2) at least equal in quality to that provided by the local exchange carrier to itself or . . . [to] any other party to which the carrier provides interconnection; and (3) provided on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of [section 251] . . . and section 252.

Section 252(d)(1) of the Act states that "[d]eterminations by a State commission of the just and reasonable rate for the interconnection of facilities and equipment for purposes of [section 251(c)(2)] . . . (A) shall be (i) based on the cost . . . of providing the interconnection . . . and (ii) nondiscriminatory, and (B) may include a reasonable profit." Competing carriers have

the right to deliver traffic terminating on an incumbent LEC's network at any technically feasible point on that network.⁵²

Technically feasible methods of interconnection include, but are not limited to: physical collocation and virtual collocation at the premises of an incumbent LEC and meet point interconnection arrangements.⁵³ The incumbent LEC must submit to the state commission detailed floor plans or diagrams of any premises for which the incumbent LEC claims that physical collocation is not practical because of space limitations.⁵⁴ A BOC must have processes and procedures actually in place to ensure that physical and virtual collocation arrangements are available on terms and conditions that are "just, reasonable, and nondiscriminatory" in accordance with section 251(c)(6) and the FCC's implementing rules.⁵⁵ In evaluating whether a 271 applicant has complied with its obligations, the Commission examines information regarding the quality of the BOC's procedures to process applications for collocation, the timeliness of provision, and the efficiency of provisioning collocation space.⁵⁶ Further, the BOC must provide interconnection that is "equal in quality . . . and indistinguishable from that which the incumbent provides itself, a subsidiary, an affiliate or any other party."⁵⁷

⁵² See, 47 C.F.R. § 51.321; *Local Competition First Report and Order*, ¶ 209.

⁵³ See, 47 C.F.R. § 51.321; *Local Competition First Report and Order*, ¶ 553. *Bell Atlantic New York Order*, ¶ 66.

⁵⁴ See, 47 C.F.R. § 51.321(f); *Local Competition First Report and Order*, ¶ 602.

⁵⁵ *Bell Atlantic New York Order*, ¶ 66.

⁵⁶ See, *Bell Atlantic New York Order*, ¶ 66 (citing *Second BellSouth Louisiana Order*), 13 FCC Red at 20640-41.

⁵⁷ *Local Competition First Report and Order*, ¶ 224.